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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/732,802

12/11/2003

Gonzalo Serafica

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5886

27910

7590

03/18/2009

STINSON MORRISON HECKER LLP

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EXAMINER

ALSTRUM ACEVEDO, JAMES HENRY

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/732,802	<b>Applicant(s)</b> SERAFICA ET AL.	
	<b>Examiner</b> JAMES H. ALSTRUM ACEVEDO	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/26/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 19, 26-31, 33, 34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 19, 26-31, 33-34, and 36-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/26/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

**Claims 1-11, 19, 26-31, and 33-34 are pending.** Applicants previously cancelled claims 12-18, 20-25, 32, and 35. Applicants have amended claims 1, 9, 34, and 36. Claim 39 is new. Receipt and consideration of Applicants' amended claim set, new IDS, and remarks/arguments submitted on November 26, 2008 are acknowledged. All rejections not explicitly maintained in the instant office action have been withdrawn per Applicants' claim amendments.

### ***Terminal Disclaimer(s)***

The terminal disclaimers filed on 11/26/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of (i) U.S. Patent No. 7,390,499; (ii) copending Application No. 10/425,978; (iii) copending Application No. 10,173,576; and (iv) copending Application No. 10/345,394 have been reviewed and is accepted. The terminal disclaimers have been recorded.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-11, 26-31, 33-34, and 36-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1, 19, 37, 39 are indefinite, because it is unclear if the liquid that is absorbed by the microbial cellulose wound dressing is the water present in the dressing

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(i.e. the dressing is reabsorbing water) or whether it is absorbing fluid from the wound, such as fluid wound exudate. Appropriate correction and clarification are required.

The remaining claims are rejected as depending from a rejected claim.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-11, 26-31, 33-34, and 39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 17-18, and 73-75 of copending Application No. 10/864,804 (copending ‘804).**

Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim sets claim methods of treating wounds by applying a microbial cellulose dressing, wherein the dressing of both claim sets has substantially overlapping amounts of microbial cellulose. The method claimed in copending ‘804

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necessarily yields the same results and the microbial cellulose dressing applied in the methods of copending '576 necessarily has the same or substantially similar properties, as are recited in the cited claims of the instant application, because the methods are essentially the same and use essentially the same microbial cellulose wound dressing. It is noted that many of the claims of copending '804 are specific for the treatment of subacute/acute wounds; however, it is *prima facie* obvious to utilize a wound dressing in the treatment of any wound. Moreover, it is noted that claims of copending '804 recite a method wherein chronic wounds are treated with substantially the same microbial cellulose wound dressing as recited in the instantly claimed method of treating chronic wounds. Thus, it is clear that the application of the recited microbial cellulose wound dressing to the treatment of any kind of wound ranging from chronic wounds to subacute/acute wounds is *prima facie* obvious. Therefore, a person of ordinary skill in the art at the time of the instant invention would have found claims 1-11, 26-31, 33-34, and 39 *prima facie* obvious over claims 1-3, 17-18, and 73-75 of copending Application No. 10/864,804 (copending '804).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

**Claims 1-11, 19, 26-31, and 33-34 are rejected. Claim 34 and the drawings are objected. No claims are allowed.**

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Alstrum-Acevedo whose telephone number is (571) 272-5548. The examiner is on a flexible schedule, but can normally be reached on M-F ~10am~5:30 pm, and Saturdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J.H.A.-A.

Patent Examiner

Technology Center 1600

**/Johann R. Richter/**

**Supervisory Patent Examiner, Art Unit 1616**